

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**STEPHEN C. FELLS,
Plaintiff,**

v.

Case No. 09-C-0299

**DAVID STURMA and LEON DAVIS,
Defendants.**

ORDER

On September 24, 2009, I granted defendant's motion to dismiss plaintiff's complaint on the ground that the named defendant, the City of Milwaukee Police Department, is not a legal entity that can be sued. However, I granted plaintiff leave to file an amended complaint naming the proper defendants. On January 11, 2010, plaintiff filed an amended complaint identifying the police officers that allegedly deprived him of his rights. Because this complaint appears to state a claim on which relief may be granted, and because plaintiff has been granted leave to proceed in forma pauperis, I will order that the U.S. Marshals Service serve the complaint on the defendants.

Plaintiff filed a second petition to proceed in forma pauperis along with his amended complaint. Because he has already been granted leave to proceed in forma pauperis, I will deny the second petition as moot. I also note that plaintiff has renewed his request for appointed counsel. At this time, however, it appears that plaintiff has the ability to litigate this case on his own, and therefore his request for appointed counsel will be denied.

THEREFORE, IT IS ORDERED that the United States Marshal shall serve a copy of the complaint, the summons, and this order upon the defendants pursuant to Federal

Rule of Civil Procedure 4. The plaintiff is advised that Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(a). The current fee for waiver-of-service packages is \$8.00 per item mailed. The full fee schedule is provided at 28 C.F.R. §§ 0.114(a)(2), (a)(3). Although Congress requires the court to order service by the U.S. Marshals Service precisely because in forma pauperis plaintiffs are indigent, it has not made any provision for these fees to be waived either by the court or by the U.S. Marshals Service.

IT IS FURTHER ORDERED that plaintiff's second petition to proceed in forma pauperis is **DENIED** as **MOOT**.

FINALLY, IT IS ORDERED that plaintiff's request for appointed counsel is **DENIED**.

Dated at Milwaukee, Wisconsin, this 9 day of February, 2010.

/s _____
LYNN ADELMAN
District Judge